

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<i>In the Matter of</i>	:	
<i>Review of the Section 251 Unbundling Obligations</i>	:	CC Docket No. 01-338
<i>of Incumbent Local Exchange Carriers</i>	:	
	:	
<i>Implementation of the Local Competition</i>	:	CC Docket No. 96-98
<i>Provisions of the Telecommunications Act of 1996</i>	:	
	:	
<i>Deployment of Wireless Services Offering</i>	:	CC Docket No. 98-147
<i>Advanced Telecommunications Capability</i>	:	

**REQUEST FOR CLARIFICATION OF IMPACT OF 2<sup>ND</sup> CIRCUIT STAY ON TRO DECEMBER 31, 2003  
DEADLINE FOR STATE PETITIONS**

Pursuant to Section 1.41 of the Commission's rules, 47 CFR §1.41 (2003), the National Association of Regulatory Utility Commissioners (NARUC) respectfully files this request for clarification of the impact of the United States Court of Appeals for the Second Circuit's administrative stay of certain portions of the FCC's "Report and Order and Order on Remand and Further Notice of Proposed Rulemaking" (FCC 03-36) (rel. Aug. 21, 2003) (TRO).

On September 30, 2003, InfoHighway Communications Corporation (InfoHighway) and two other companies filed a stay request with the United States Court of Appeals for the Second Circuit. Specifically, InfoHighway's petition sought a stay of the prohibition in the FCC's that blocked all carriers who utilize the UNE platform under 47 U.S.C. § 251 from serving pre-existing or new "enterprise customers." TRO at ¶¶ 451-58. The FCC also indicated that such carriers have 90 days from the TRO's effective date (i.e., until December 31, 2003) to persuade State commissions to petition the FCC for a waiver of the enterprise customer prohibition on a State-specific basis. TRO at ¶ 528.

On October 8, 2003, the Second Circuit granted the InfoHighway's motion "on a temporary basis, until this motion is heard and decided by a motions panel of this Court." Understandably the 2<sup>nd</sup> Circuit's action created confusion among NARUC's State members who were uncertain whether they needed to put related 90-day proceedings on hold. The temporary stay, at least on an interim basis, mooted the need for action in the 90-day dockets. Several CLECs strenuously pressed specific commissions to stop all proceedings on that basis.

On November 3, 2003, the 2nd Circuit lifted the temporary stay when it sent the case to the D.C. Circuit, which is considering all TRO suits.

NARUC respectfully requests clarification of the impact of the temporary stay on the December 31, 2003 deadline for State action. NARUC believes the deadline was effectively stayed by the Court's Order. That should mean the new deadline should be 90 days from November 3, 2003 – the day the stay was lifted. But in any case, at a minimum, the stay should have tolled the deadline for the 25 days it was in effect.

**Respectfully Submitted**

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